

**DEPARTMENT OF STATE REVENUE****LETTER OF FINDINGS NUMBER: 99-0094 IT  
Individual Income Tax  
For The Period: 1997**

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**ISSUES****I. Individual Income Tax: Imposition**

**Authority:** IC 6-3; Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax 1994); Thomas v. Indiana Dept. of State Revenue, Case No. 49T10-9512-TA-00132 (Ind. Tax 1997).

Taxpayers protest the imposition of Indiana Individual Income Tax on their income.

**STATEMENT OF FACTS**

The taxpayers filed their 1997 Indiana Full-Year Resident Individual Income Tax Return form and listed on lines one through five (1-5) that they had no income. Taxpayers' W-2 Wage and Tax Statement for 1997 is at cross-purposes with the "zero" entry on their 1997 tax return, since the taxpayers' W-2 shows that one of them had over \$50,000 in "wages, tips, other compensation."

**I. Individual Income Tax: Imposition****DISCUSSION**

Taxpayers argue that wages and salaries are not taxable, and that Indiana (and the federal government) has a "profits" tax—not an income tax. The taxpayers seize upon the language of Internal Revenue Code Sec. 61(a), relying on the language "gross income means all income from whatever source derived" to stand for the proposition that Sec. 61 does not impose a tax on the items listed (*e.g.*, compensation for services). In addition, the taxpayers state that "private persons" cannot be taxed since an individual cannot "generate an accounting 'profit' . . ." They also aver that the tax (the federal or the state?) is an illegally enforced "unapportioned direct tax

on [taxpayers] sources of income.” The Department finds the taxpayers arguments to be without merit and to not meet the *prima facie* burden of proof outlined in IC 6-8.1-5-1.

The taxpayers gloss over the 16<sup>th</sup> Amendment to the Constitution, which was ratified in 1913. The amendment gave Congress the power “to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States and without regard to any census or remuneration.” Article X, Sec. 8, of the Indiana Constitution empowers the General Assembly to levy and collect a tax on income. Thus the federal government and the state government both clearly have the power to tax income, and the apportionment issue was long ago settled by the 16<sup>th</sup> Amendment.

The Indiana Tax Court has dealt with arguments similar to those of the taxpayers. In Thomas v. Indiana Dept. of State Revenue, Case No. 49T10-9512-TA-00132 (Ind. Tax 1997), the Tax Court dealt with the argument that “the federal definition of income does not include wages, salaries, or other forms of compensation.” The Tax Court noted that Thomas relied upon Eisner v. Macomber to reach the “mistaken” conclusion that wages do not constitute income to their recipients. The Tax Court enunciated two reasons the taxpayer was mistaken: (1) the monetary payments made in exchange for labor were “severed from labor and received or drawn by the recipient for his separate use,” and (2) even if, *arguendo*, the federal government overstepped its constitutional authority, it would not have affected Indiana’s sovereign authority to levy the Indiana income tax.

Another Indiana Tax Court case is worth noting—Richey v. Department of State Revenue, 634 N.E.2d 1375 (Ind. Tax 1994). In that case, the Tax Court rejected Richey’s argument that the Adjusted Gross Income tax in Indiana did not apply to income earned in a trade. As the Richey case states at the outset:

Does the State of Indiana, under the current constitutional and statutory framework of income taxation, possess the authority to tax the Indiana adjusted gross income of an individual Indiana resident? Although the question may suggest its own answer to most, it has nonetheless led the Petitioner, Jerry Richey, on a quest for the tax protester’s grail—a court ruling that income taxation in this state and this country is void *ab initio*. Alas, no Merlin’s magic or Excalibur can aid Richey’s quest: Indiana has the authority to tax Richey’s adjusted gross income.

### **FINDING**

The taxpayers’ protest is denied.